
Public Notice

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**U.S. Army Corps
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Buffalo District CELRB-CO-R RE: 98-05(4) Section: NY 10 and 404

**PUBLIC NOTICE FOR FEDERAL REGISTER NOTICE
ANNOUNCING NEW NATIONWIDE PERMITS
AND
REGIONAL CONDITIONS FOR THE STATE OF NEW YORK**

On 9 March 2000, the Corps published a notice in Part II of the Federal Register (65 FR 12818-12899) announcing the issuance of five new Nationwide Permits (NWP), the modification of six existing NWPs, the modification of nine NWP general conditions, and the adoption of two new NWP general conditions. These NWPs are activity-specific and authorize certain activities in non-tidal waters of the United States that have minimal adverse effects on the aquatic environment. The new NWP general conditions limit the use of certain NWPs in designated critical resource waters and waters of the United States within 100-year floodplains.

After the publication of this Federal Register notice, Corps districts will begin finalizing their regional conditions for the new and modified NWPs. Regional conditions will provide additional protection for the aquatic environment, by ensuring that the NWPs authorize only those activities with minimal adverse effects on the aquatic environment. Regional conditions will help ensure protection of high value waters within the District.

The publication of this Federal Register notice also begins a 90 day process for States and Tribes to make their Section 401 water quality certification and Coastal Zone Management Act (CZMA) consistency determination decisions. The 401/CZMA decisions must be made within 90 days of publication of the 9 March 2000 Federal Register. At the end of this 90 day period, the new and modified NWPs and Corps regional conditions will become effective on 7 June 2000.

The 9 March 2000 Federal Register notice is available for viewing at the Buffalo District Corps of Engineers Regulatory Branch, 1776 Niagara Street, Buffalo, New York 14207-3199, or on the Internet at <http://www.usace.army.mil/inet/functions/cw/cecwo/reg/>. As an alternative, World Wide Web users can access the Federal Register through the U.S. Government Printing Office at http://www.access.gpo.gov/su_docs/aces/aces140.html.

The Corps has also issued final decision documents for the new and modified NWPs. These documents are also available on the Internet at <http://www.usace.army.mil/inet/functions/cw/cecwo/reg/> and at Corps district offices. Furthermore, the NWP decision documents will be supplemented by Division Engineers to address decisions concerning regional conditioning of the NWPs.

Enclosed is an index of the final new and modified NWPs and conditions. Anyone who wishes to obtain a full text copy of the NWPs can do so through the Corps Home Page or the Federal Register.

Questions pertaining to the regional conditioning of the proposed Nationwide permits described in this notice should be directed to Diane C. Kozlowski, who can be contacted by calling (716) 879-4433, or by e-mail at: Diane.C.Kozlowski@usace.army.mil

Paul G. Leuchner
Chief, Regulatory Branch

NOTICE TO POSTMASTER: It is requested that this notice be posted continuously and conspicuously until 7 June 2000.

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Definitions

Best Management Practices
Compensatory mitigation
Creation
Enhancement
Ephemeral stream
Farm tract
Flood fringe
Floodway
Independent utility
Intermittent stream
Loss of waters of the United States
Non-tidal wetland
Open water
Perennial stream
Permanent above-grade fill
Preservation
Restoration
Riffle and pool complex
Single and complete project
Stormwater management
Stormwater management facilities
Stream bed
Stream channelization
Tidal wetland
Vegetated buffer
Vegetated shallows
Waterbody

The Buffalo District, in conjunction with New York District, is proposing to incorporate the following regional conditions into the proposed new and modified Nationwide Permits (NWP). These regional conditions are intended to supplement the NWP terms and conditions published in the Federal Register on 9 March 2000. These regional conditions are applicable only in the state of New York.

I. Permit-Specific Conditions

A. Nationwide Permit #3 - Maintenance

1. For activities involving the removal of accumulated sediments and debris in the vicinity of existing structures to restore the waterway to previously existing depths, the applicant must provide evidence of such depths. If this information is not available, the applicant must provide evidence of the existing depths immediately outside the proposed work area.

2. Any proposed repair, rehabilitation, or reconstruction of existing bulkheads that extend waterward more than eighteen (18) inches from the existing bulkhead will require notification to the District Engineer in accordance with Nationwide Permit General Condition No. 13 ("Notification"). Notification must include

justification for a waterward extension exceeding eighteen (18) inches, such as geologic conditions, engineering requirements, etc.

3. All predominantly fine-grained material removed from the vicinity of existing structures shall be deposited at an upland location and be stabilized or contained in a manner that prevents reintroduction to waters of the United States. The District Engineer may require that the permittee discharge material composed primarily of sand or gravel so as to replenish the littoral drift system.

4. For activities involving pouring of concrete into waters of the United States, the permittee must employ watertight forms. The forms shall be dewatered prior to the pouring of concrete.

5. Maintenance activities that involve discharges of dredged or fill material into waters of the United States for the purpose of creating temporary structures to facilitate work such as groins, work pads, laydown areas, cofferdams, staging areas or similar fills require Notification to the District Engineer in accordance with Nationwide Permit General Condition No. 13 ("Notification").

6. No in-stream work shall occur during predicted periods of high flow.

7. During dewatering, water should not be returned directly to the waterway but shall be pumped upland and filtered through 1 or several rows of straw bale or silt fence barriers.

8. The permittee shall use the Construction Best Management Practices described in Section III.B., as appropriate in **all** activities authorized under this Nationwide Permit.

B. Nationwide Permit #7 - Outfall Structures and Maintenance

1. In reviewing the notification for the proposed dredging activity, the District Commander may determine the necessity for submittal of sediment analyses.

C. Nationwide Permit #12 - Utility Activities

1. Materials resulting from trench excavation for utility line installation which are temporarily sidecast into waters of the United States must be backfilled or removed within thirty (30) days of the date of their deposition.

2. This nationwide permit does not apply to any utility line or transmission facility that is subject to the jurisdiction of the Federal Energy Regulatory Commission or the New York State Public Service Commission under Article VII of the Public Service Law.

3. That notification for substations and permanent access roads shall include documentation detailing the necessity for selected location and permanency, and reasons why additional avoidance and minimization cannot be achieved.

4. Where the discharge will cause the permanent loss of between 1/4 and 1/2 acre of wetland, the Notification shall include a

delineation of special aquatic sites and a compensatory mitigation proposal to offset the loss of waters of the United States.

5. No in-stream work shall occur during predicted periods of high flow.

6. For aerial transmission lines across navigable waters:

a. The following minimum clearances are required for aerial transmission lines across navigable waters of the United States. These clearances are related to the clearances over the navigable channel provided by existing fixed bridges or clearances which would be required by the United States Coast Guard for new fixed bridges in the vicinity of the proposed aerial transmission line. These clearances are based on the low point of the line under conditions producing the greatest sag, taking into consideration temperature, load, wind, length of span, and type of supports as outlined in the National Electrical Safety Code:

<u>Nominal System Voltage (kV)</u>	<u>Minimum additional clearance (ft.) above clearance required for bridges</u>
115 and below	20
136	22
161	24
230	26
350	30
500	35
700	42
750 and above	45

b. Clearances for communication lines and other aerial crossings must be a minimum of 10 feet above clearances required for bridges, unless specifically authorized otherwise by the District Engineer.

c. Within 60 days of completion of the work, the permittee shall furnish the Corps and National Oceanic And Atmospheric Administration, National Ocean Service, N/CS261, Marine Chart Division, Nautical Data Branch, Station 7317, 1315 East-West Highway, Silver Spring, MD 20910-3282, with certification that the aerial wire has been installed in compliance with the approved plans. The certification shall include a survey, conducted by a licensed surveyor, which clearly shows the minimum clearance of the aerial wire above the mean high water line at the mean high water line at the time of the survey. The certification shall also include a statement by the permittee that the clearance of the wire(s), at maximum sag conditions, shall never be less than the clearance shown on the approved plans.

7. For Buried Cables and Pipelines Across Navigable Waters and Federal Navigation Channels:

a. The top of the cable or pipeline crossing any Federal project channel shall be located a minimum of 15 feet below the authorized project channel depth. The District Engineer, on a case-by-case basis, may modify this depth requirement where circumstances are deemed appropriate. In areas outside of Federal project channels,

the top of the cable or pipeline shall be located a minimum of 4 feet below the existing level of the waterway substrate. Where trenching and backfilling are proposed, backfill material shall consist of suitable heavy materials and shall be placed no higher or lower than the adjacent river bottom elevation.

b. Within 60 days of completion of the work, the permittee shall furnish the Corps and the National Oceanic And Atmospheric Administration, National Ocean Service, N/CS261, Marine Chart Division, Nautical Data Branch, Station 7317, 1315 East-West Highway, Silver Spring, MD 20910-3282, with certification that the cable or pipeline has been installed in compliance with the approved plans. The certification shall include a survey, conducted by a licensed surveyor, which clearly shows the elevations and alignment of the cable or pipeline across the waterway. If the post-completion survey reveals a discrepancy between the authorized and actual alignment of the cable or pipeline, the permittee shall note clearly these discrepancies in the survey.

c. Within 15 days after completion of the authorized work, the permittee shall post visible signage on weatherproof placards no smaller than 4 feet by 4 feet on each shoreline at the location of the authorized crossing. The placard shall contain language informing waterway users of the presence of a cable or pipeline crossing (e.g., "WARNING - CABLE [or PIPELINE] CROSSING"), unless specifically authorized otherwise by the District Engineer.

8. Where the proposed discharge would result in a loss of waters of the United States greater than 1/4 acre, the District Engineer will, upon receipt of Notification, provide immediately (e.g., facsimile transmission, overnight mail, or other expeditious manner) a copy to the appropriate office of the New York State Department of Environmental Conservation.

9. The permittee shall use the Construction Best Management Practices described in Section III.B., as appropriate in **all** activities authorized under this Nationwide Permit.

D. Nationwide Permit #14 - Linear Transportation Crossings

1. Where the proposed discharge would result in a loss of waters of the United States greater than 1/4 acre, the District Engineer will, upon receipt of Notification, provide immediately (e.g., facsimile transmission, overnight mail, or other expeditious manner) a copy to the appropriate office of the New York State Department of Environmental Conservation.

2. Discharges of fill material associated with temporary road crossings in wetlands shall be placed on filter fabric. All temporary road crossings shall be removed upon completion of the work and the disturbed area restored to preconstruction contours, elevations and wetland conditions.

3. This Nationwide Permit does not apply to discharges in Cross Lake and adjacent wetlands or within adjacent sections of the Seneca River including adjacent wetlands subject to the Buffalo District's Cross Lake Flooding study.

E. Nationwide Permit #27 - Stream and Wetland Restoration Activities

1. The Buffalo District has not proposed regional conditions for this Nationwide Permit.

F. Nationwide Permit #39 - Residential, Commercial, and Institutional Developments:

1. Notification is required for **any** discharge into those Waters of the United States identified in Section II.A. below.

2. This nationwide permit does not apply to regulated activities that involve the discharge of dredged or fill material into open waters below the ordinary high water mark.

3. All recreation activities associated with the development proposed as part of this authorization must meet the following requirements:

a. The proposed recreation activity does not substantially deviate from natural landscape contours and is designed to minimize adverse effects to waters of the United States, including wetlands and riparian areas through the use of practices such as integrated pest management, adequate stormwater management facilities, vegetated buffers, reduced fertilizer use, etc.

b. The proposed recreation activity must have an adequate water quality management plan in accordance with Nationwide Permit General Condition No. 9.

4. This authorization is not applicable to new stormwater management facilities.

5. Vegetated buffer zones around all remaining waters of the United States, including wetlands, will be required as part of the compensatory mitigation proposal.

6. Where the proposed discharge would result in a loss of waters of the United States greater than 1/4 acre, the District Engineer will, upon receipt of Notification, provide immediately (e.g., facsimile transmission, overnight mail, or other expeditious manner) a copy to the appropriate office of the New York State Department of Environmental Conservation.

7. The regulated activity does not cause the loss of areas classified as bogs, fens, or vernal pools, as determined by the Buffalo District Corps of Engineers.

8. This nationwide permit does not apply to activities proposed for waters of the United States, including wetlands within the designated boundaries of the New York State Coastal Zone.

9. This nationwide permit does not apply to discharges in Cross Lake and adjacent wetlands or within adjacent sections of the Seneca River including adjacent wetlands subject to the Buffalo District's Cross Lake Flooding study.

10. The permittee shall use the Construction Best Management Practices described in Section III.B., as appropriate in **all** activities authorized under this Nationwide Permit.

G. Nationwide Permit #40 - Agricultural Activities

1. The permittee must demonstrate that the building is necessary for the agricultural production of the land.

2. This nationwide permit does not apply to any discharges in excess of 1/3 acre.

H. Nationwide Permit 41 - Reshaping Existing Drainage Ditches

1. This authorization would only apply to artificial drainage ditches. An artificial drainage ditch is a man-made or man-induced drainage course. Naturally occurring drainage courses that incidentally drain the project area are not considered to be artificial drainage ditches.

2. The permittee must provide documentation on serviceability of the ditch system and a history of recent maintenance activity.

3. The permittee shall use the Construction Best Management Practices described in Section III.B., as appropriate in **all** activities authorized under this Nationwide Permit.

4. The regulated activity does not cause the loss of areas classified as bogs, fens, or vernal pools, as determined by the Buffalo District Corps of Engineers.

I. Nationwide Permit 42 - Recreational Activities

1. This authorization is not available for construction or expansion of golf courses or ski resorts.

2. Parking facilities authorized under this Nationwide Permit must consist solely of pervious surfaces.

3. This nationwide permit does not apply to regulated activities that involve the discharge of dredged or fill material into open waters below the ordinary high water mark.

4. The permittee shall use the Construction Best Management Practices described in Section III.B., as appropriate in **all** activities authorized under this Nationwide Permit.

5. The permittee must avoid and minimize impacts to wetlands at the project site to the maximum extent practicable. The permittee must provide a written statement supporting their assertion that additional avoidance and minimization measures are not practicable.

6. Notification is required for **any** discharge into those waters of the United States identified in Section II.A., below.

7. The mitigation replacement ratio to offset losses of water of the United States, including wetlands, will be a **minimum** of 1:1. Vegetated buffer zones around all remaining waters of the United

States, including wetlands, will be required as part of the mitigation proposal.

8. Where the proposed discharge would result in a loss of waters of the United States greater than 1/4 acre, the District Engineer will, upon receipt of Notification, provide immediately (e.g., facsimile transmission, overnight mail, or other expeditious manner) a copy to the appropriate office of the New York State Department of Environmental Conservation.

9. The regulated activity does not cause the loss of areas classified as bogs, fens, or vernal pools, as determined by the Buffalo District Corps of Engineers.

J. Nationwide Permit #43 - Stormwater Management Facilities

1. This authorization is not available for new stormwater management facilities.

2. Activities which would result in the loss of more than one (1) acre of waters of the United States are not authorized.

3. Where the proposed discharge would result in a loss of waters of the United States greater than 1/4 acre, the District Engineer will, upon receipt of Notification, provide immediately (e.g., facsimile transmission, overnight mail, or other expeditious manner) a copy to the appropriate office of the New York State Department of Environmental Conservation.

4. The permittee shall use the Construction Best Management Practices described in Section III.B., as appropriate in **all** activities authorized under this Nationwide Permit.

5. The regulated activity does not cause the loss of areas classified as bogs, fens, or vernal pools, as determined by the Buffalo District Corps of Engineers.

K. Nationwide Permit #44 - Mining Activities

1. The Buffalo District is recommending revocation of this Nationwide Permit.

II. Region-Specific Conditions

A. The prospective permittee must notify the District Engineer in accordance with the "Notification" general condition for **any** discharges subject to Nationwide Permits 39 and 42, into the following waters of the United States:

Cayuga County

- o Bear Swamp, Town of Sempronius
- o Montezuma Wetlands, Towns of Conquest and Montezuma

Chautauqua County

- o Alder Bottom Swamp, Towns of Sherman and Clymer

Cortland County

- o Beaver Brook fens, marl ponds and Chicago Bog, Town of Cortlandville

Jefferson County

- o Adams Swamp, Town of Adams
- o Johnny Cake Road Sinkholes, Town of Cape Vincent

Lewis County

- o Blue Swamp, Town of Croghan
- o Bonaparte Swamp, Town of Diana
- o Boylston Tamarack Swamp, Town of Boylston
- o Carley Swamp, Town of Diana
- o Fox Brook Swamp, Towns of Orwell and Redfield

Madison County

- o Fiddler's Green, Town of Eaton
- o Nelson Swamp, Towns of Cazenovia and Nelson

Monroe County

- o Thousand Acre Swamp, Town of Penfield

Niagara County

- o Klydel Wetland, Town of North Tonawanda

Oneida County

- o Big Bay Swamp and Toad Harbor Swamp, Towns of Constantia and West Monroe
- o Rome Sand Plains wetlands, City of Rome

Ontario County

- o Honeoye Inlet wetlands, Towns of Canadice and Richmond

Oswego County

- o Mud Pond Fen, Town of Oswego
- o North and South Pond and adjacent fens, Tug Hill Plateau, Town of Amboy

Seneca County

- o Junius Ponds, Town of Junius

Tompkins County

- o Fall Creek and Beaver Brook Fens, Towns of Dryden and Groton

Wayne County

- o Zurich Bog, Town of Arcadia

Wyoming County

- o Java Lake and Younger Road fens, Town of Java

III. Generally-Applicable Conditions

A. A preconstruction notification to Buffalo District is required for any in-water work or discharges of dredged or fill material in the following: Bergen Swamp and the western edge of Seneca Lake (Glenora Cliff Area). The Buffalo District will provide the U.S. Fish and Wildlife Service with a five (5) day review period in these areas to comment on effects on Federally listed threatened and endangered species. Permittees shall not commence work in these areas until notified by the District Engineer.

B. Compensatory Mitigation Compliance Report: For approved mitigation proposals, the permittee must submit evidence of the following listed actions to the Buffalo District Corps of Engineers when the mitigation has been completed.

1. Purchase of credits from a Corps-approved mitigation bank;
2. Acknowledgment of transfer of funds for In Lieu Fee Arrangements;
3. Recording of deed restrictive covenants;
4. Execution of conservation easements.

The permittee must submit such evidence before commencement of the authorized activity or within 60 days of issuance of the authorization letter by the Buffalo District Corps of Engineers, whichever is later. This reporting requirement does not waive or supersede the reporting requirements set forth in Nationwide General Permit General Condition No. 14.

C. Construction Best Management Practices (BMP's): Unless specifically approved otherwise, following review of a Pre-Construction Notification, the following BMP's must be implemented to the maximum degree practicable, to minimize erosion, migration of sediments, and adverse environmental impacts:

1. Mulch, hay bales, silt fences, or other means must be properly employed to minimize erosion and migration of sediments during construction. Temporary measures must be removed upon completion;
2. Construction access shall be by means that avoid or minimize impacts to aquatic sites (e.g. upland access, floating barges, mats, etc.);
3. All excess excavated material remaining on site must be properly contained and permanently stabilized to prevent erosion.
4. Upon project completion, impacted land surfaces must be permanently stabilized to prevent erosion;

5. Upon project completion, impacted aquatic sites must be restored to their original contours and conditions;

6. Unless otherwise recommended by the Buffalo District Corps of Engineers, the bottom elevation of culverts placed in aquatic sites (i.e., "invert elevation"), including wetland, must be at the same elevation as the aquatic area adjacent to the culvert. Culverts must be designed, installed, and maintained to prevent erosion and to provide passage for aquatic life and anadromous fishes known to occur naturally in the vicinity of the culvert.

D. No Nationwide Permit may be used in Lakes Erie or Ontario for purposes of diverting water from the Great Lakes.